



Title 16, Division 11, New Article 4, Section 1109 Dental Hygiene Board of California

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Dental Hygiene Board of California (Board) is proposing to take the rulemaking action described below under the heading Informative Digest/Policy Statement Overview. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office on September 14, 2020.

The Board has not scheduled a public hearing on this proposed action. The Board will, however, hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period.

The Board may, after considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 1905, 1906, and 1910.5 of the Business and Professions Code (BPC), and to implement, interpret or make specific section 1910.5 of the BPC, the Board is considering changes to Division 11 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

BPC sections 1905 and 1906 authorize the Board to adopt, amend, and revoke regulations to implement the statutory requirements of Article 9 of Chapter 4, BPC sections 1900 through 1966.6, regarding dental hygienists. The Board, a constituent agency within the DCA, regulates registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions (collectively RDHs). The Board's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The Board's core functions are issuing licenses to qualified applicants, investigating consumer complaints filed against licensees, disciplining licensees for sustained violations of the BPC and Title 16 of the CCR, and monitoring licensees placed on disciplinary probation by the Board.

On September 27, 2014, Governor Edmund G. Brown Jr. signed Assembly Bill (AB) 1174 (Bocanegra, Chapter 662, Statutes of 2014), which authorized additional duties for registered dental hygienists and RDHAPs and required the Board to adopt regulations to establish requirements for courses of instruction in Radiographic Decision Making (RDM) and Interim Therapeutic Restoration (ITR) for registered dental hygienists and RDHAPs.

Among other things, AB 1174 enacted section 1910.5, which became operative on January 1, 2018. BPC section 1910.5 requires the Board to establish by regulation requirements for courses of instruction in RDM and ITR for registered dental hygienists and RDHAPs using the competency-based training protocols established by the Health Workforce Pilot Project (HWPP) No. 172 through the Office of Statewide Health Planning and Development. Pursuant to BPC section 1921, a RDHEF may perform any of the duties or functions authorized to be performed by a registered dental hygienist.

- **Adopt Section 1109 to Title 16 of the California Code of Regulations.**

With the proposed regulation, the Board addresses the lack of a means for providers to apply for course approval in courses in RDM or ITR. This proposal seeks to establish the regulatory requirements that an educational provider must meet for the Board to issue an approval and renewal of approval for an RDM or ITR course. By apprising educational providers of the regulatory requirements to apply for RDM or ITR course approval, the Board is ensuring that educational providers have the necessary information regarding the conditions for approval and for continuation of approval of a course in RDM or ITR. BPC section 1905 authorizes the Board to evaluate all RDH educational programs that apply for approval and grant or deny approval of those applications. Accordingly, this proposal establishes requirements for courses offered to each category of RDH.

The regulatory proposal incorporates by reference the following forms:

- Form: DHBC RDM-01 (01/19), Application for Approval of a Course in Radiographic Decision-Making for the Student in a Dental Hygiene Educational Program
- Form: DHBC RDM-02 (01/19), Application for Approval of a Continuing Education Course in Radiographic Decision-Making for the Registered Dental Hygienist, Registered Dental Hygienist in Alternative Practice, and Registered Dental Hygienist in Extended Functions
- Form: DHBC ITR-03 (01/19), Application for Approval of a Course in Interim Therapeutic Restorations for the Student in a Dental Hygiene Educational Program
- Form: DHBC ITR-04 (01/19), Application for Approval of a Continuing Education Course in Interim Therapeutic Restorations for the Registered Dental Hygienist, Registered Dental Hygienist in Alternative Practice, and Registered Dental Hygienist in Extended Functions

Anticipated Benefits of the Proposed Regulation:

This proposal would provide clarity to providers regarding the educational requirements for courses in RDM and ITR. It will also establish a consistent and simple process for all educational providers to apply for approval, and to maintain continued approval with the Board, for courses in RDM or ITR. This regulatory proposal will positively impact the welfare of California's residents in need of dental care by giving them the added option of receiving treatment designed to provide stabilization of the tooth and relief from pain and discomfort in a more efficient and effective manner. Additionally, the ability of taking radiographs (i.e. x-rays) results in expedited entry into the dental care system and increases access to care.

Further, this proposal promotes transparency in requirements for RDM and ITR licensure, as well as apprising RDHs of Board policies pertaining to the practice of dental hygiene and the specific representations that RDHs are permitted to make regarding their allowed duties. This serves to educate, promote, and protect public safety.

Determination of Inconsistency and Incompatibility with Existing State Regulations:

During the process of developing this regulation, the Board has conducted a search of any similar regulations on this topic and has concluded that the proposed regulatory action is not inconsistent or incompatible with existing state regulations.

DISCLOSURES REGARDING PROPOSED ACTION

The DHBC has made the following initial determinations:

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The Board anticipates 27 RDH schools and 23 Continuing Education (CE) providers will opt to register with the Board. Any additional workload and costs are anticipated to be minor and absorbable within existing resources.

In the event all of the schools and CE providers register and pay the \$300 registration fee, the Board's revenues will increase by approximately \$15,000. For additional information, please refer to the ISOR.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to any Local Agency or School District for which Government Code Sections 17500 through 17630 Require Reimbursement: None

Business Impact

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts:

The Board has determined that this regulatory action will have a minor positive impact on the creation of jobs, creation of new businesses, and expansion of businesses currently operating in the State of California. Specifically, providers will benefit from the additional duties of RDM and ITR by RDHs because they will be able to offer additional courses in RDM and ITR to the RDH community. There may also be an increase in demand for RDHs educated in RDM and ITR duties.

Cost Impacts on a Representative Private Person or Businesses:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action because the Board will not collect fees from either the private person or individual RDH or the business-related course provider.

This regulatory proposal would allow the RDH to become trained in the optional dental hygiene duties of RDM and ITR. The cost of applying for approval for a course in RDM or ITR to the educational provider is optional, and only required if the provider decides they want to teach these courses. Similarly, the cost to the individual RDH is optional and at the discretion of the course provider as to their individual course charges.

Significant Effect on Housing Costs: None

Business Reporting Requirement

An RDM or ITR course provider is required to report to the Board any changes in content, facilities, or staff applicable to the course(s) on a biennial basis. Course providers will not incur any additional costs to report these changes to the Board. It is necessary for the health, safety, or welfare of the people of the state that the regulation apply to business.

Results of the Economic Impact Analysis/Assessment

Impact on Jobs/Businesses: The Board has determined that this regulatory action will have a minor positive impact on the creation of jobs, creation of new businesses, and expansion of businesses currently operating in the State of California.

To the extent CE providers opt to provide these courses and RDHs choose to participate in these courses, CE providers will likely have increased revenues. The Board estimates a typical CE provider will charge up to \$3,100 per course and up to 7,000 current RDH licensees will attend these courses, which would result in total CE revenues of approximately \$21.7 million. For additional information, please refer to the ISOR.

Benefits of the Proposed Action:

The Board has determined that this regulatory action will have a minor positive impact on the creation of jobs, creation of new businesses, and expansion of businesses currently operating in the State of California and will not eliminate existing jobs or businesses. Specifically, providers will benefit from the additional duties of RDM and ITR by RDHs because they will be able to offer additional courses in RDM and ITR to the RDH community. There may also be an increase in demand for RDHs educated in RDM and ITR duties. Consequently, this could create jobs and businesses, as well as expand existing businesses.

This proposal will positively affect the welfare of the public in California in need of dental care by giving them the option for ITR, thereby providing stabilization of the tooth and relief of pain and discomfort until the patient may be attended to by a dentist for permanent therapy. Additionally, the ability of taking radiographs (RDM) utilizing the protocols established by the supervising dentist, allows expedited entry into the dental care system and provides the supervising dentist the needed tools (radiographs) to make a diagnosis and treatment plan for the patient.

This proposal would not affect worker safety because this proposal does not involve worker safety issues. The proposed regulation only establishes a regulation for RDM and ITR educational course approvals.

This proposal will not affect the state's environment because this proposed regulation does not involve environmental issues. The proposed regulation only establishes a regulation for RDM and ITR educational course approvals.

Small Business Determination: The Board has determined that this regulatory action would have no impact on small businesses, including the ability of small business to compete in this state. Instead, the proposed regulatory action will only provide guidance to educational providers in the requirements of RDM and ITR coursework.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action described in this Notice or would be more cost-effective to the affected private persons and equally effective in implementing the statutory policy or other provision of the law.

Interested persons are invited to present statements or arguments orally or in writing relevant to the above determinations at the above scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries or comments concerning the proposed regulatory action may be directed to the following designated agency contact persons:

Dental Hygiene Board of California
Attn: Adina A. Pineschi-Petty DDS
2005 Evergreen St, Ste. 2050
Sacramento, CA 95815
Phone: 916-576-5002
Email: adina.petty@dca.ca.gov

Backup Contact Person:
Attn: Anthony Lum
2005 Evergreen St, Ste. 2050
Sacramento, CA 95815
Phone: 916-576-5004
Email: anthony.lum@dca.ca.gov

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, or other information upon which the rulemaking is based to Dr. Pineschi-Petty at the above address. In her absence, please contact the designated back-up contact person.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the amendments as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that was noticed to the public. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for review and or written comment at least 15 days

before it is adopted. The public may request a copy of the modified regulatory text by contacting Dr. Pineschi-Petty at the address above.

AVAILABILITY OF FINAL STATEMENT OF REASONS

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting Dr. Pineschi-Petty at the address above.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to Dr. Pineschi-Petty at the address above or by accessing the website listed below.

TEXT OF THE PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the ISOR, and all of the information on which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2005 Evergreen Street, Suite 2050, Sacramento, California 95815, or by accessing the Board's website at <https://www.dhbc.ca.gov/lawsregs/index.shtml>.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Actions the Initial Statement of Reasons, and the text of the regulations can be accessed through the Board's website at <https://www.dhbc.ca.gov/lawsregs/index.shtml>.